

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION**

**FERNANDO JOSE RAMIREZ
MORALES,
*Plaintiff,***

v.

**MANIDER SINGH, and CHAHAL
ONTIME, INC.,
*Defendants.***

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P:23-CV-00043-DC

ORDER

The Court now considers the report and recommendation of United States Magistrate Judge David Fannin¹ concerning Plaintiff Fernando Jose Ramirez Morales' motion for declaratory judgment.² In his report and recommendation, Judge Fannin recommends that the Court grant in part and deny in part. Plaintiff Morales timely filed objections to the report and recommendation.³

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court.⁴ Because Morales timely objected to a portion of the report and recommendation, the Court reviews that portion of the report and recommendation *de novo*. Having done so, the Court overrules Morales' objections and adopts the report and recommendation as its own order.

¹ ECF No. 40

² ECF No. 16.

³ ECF No. 42.

⁴ 28 U.S.C. § 636(b)(1)(C).

From a technical standpoint, Morales does not object to Judge Fannin’s order in any part. He instead offers new evidence, in the form of an affidavit, to support a damages award for past medical expenses in the amount of \$128,690.21.⁵ While a district court may at its discretion view new evidence raised for the first time in an objection to a magistrate judge’s report and recommendation,⁶ it would appear that Morales misread Judge Fannin’s views on Section 18.001 of the Texas Civil Practice and Remedies Code.⁷ In his report and recommendation, Judge Fannin touched on—but did not weigh in on—Section 18.001 affidavits and their applicability in federal court, stating the following in a footnote

This Court has held that Section 18.001 does not apply in federal court and only expert testimony will satisfy a plaintiff’s burden. *See Ruelas v. W. Truck & Trailer Maint. Inc.*, No. 18-CV-2, 2019 WL 13150020, at *4 (W.D. Tex. June 6, 2019); *see also Cavazos [v. A & T Bros. et al]*, No. 23-CV-110,] 2024 WL 3891402, at *11 [(S.D. Tex. July 12, 2024)]. Since Plaintiff did not provide an affidavit satisfying Section 18.001, the Court does not reach the issue of applicability.⁸

This Court agrees with Judge Fannin’s assessment of the state of Section 18.001 case law. Section 18.001 is a purely procedural function of Texas law and “directly conflicts with the Federal Rules of Evidence 801 and 802, which prevents the application of § 180.001 in federal court.”⁹ Accordingly, the Court **ORDERS** that the report and recommendation of

⁵ See generally ECF No. 42.

⁶ See *Freeman v. Cnty. of Bexar*, 142 F.3d 848, 853 (5th Cir. 1998).

⁷ See *id.* at 5; ECF No. 40 at 20.

⁸ ECF No. 40 at 20 n.9.

⁹ *Rivera v. Autotransportes Fronterizos, M.G., S.A. De C.V.*, No. 7:21-CV-00428, 2022 WL 3069290, at *3 (S.D. Tex. Aug. 3, 2022); *Ruelas*, 2019 WL 13150020, at *4 (W.D. Tex. Sept. 6, 2019) (offering an overview of Section 18.001 case law).

United States Magistrate Judge David Fannin¹⁰ is **ADOPTED**. Morales' motion is **GRANTED IN PART** and **DENIED IN PART**.¹¹

Plaintiff's motion is **GRANTED** as it relates to:

- Plaintiff's negligence and gross negligence claims against Defendant Singh;
- Plaintiff's vicarious liability, negligent entrustment, and gross negligence claims against Defendant Chahal Ontime.

Plaintiff's motion is **DENIED** as it relates to:

- Plaintiff's negligence per se claim against Defendant Singh; and
- Plaintiff's claims for negligent hiring, negligent qualifications, negligent vehicle monitoring, negligent retention, negligent management, negligent contracting, negligent maintenance, and negligent supervision against Defendant Chahal Ontime.

It is so **ORDERED**.

SIGNED this 14th day of January, 2025.



DAVID COUNTS
UNITED STATES DISTRICT JUDGE

¹⁰ ECF No. 40.

¹¹ ECF No. 42.